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REMARKS

This is in response to the Office Action dated March 18, 2008. In that Office Action, the Examiner withdrew the allowance of claims 1 and 2, and rejected claims 1-2 under 35 USC 103(a) as being obvious in view of non-patent reference "Online: Ticket Scalpers Find a Home on the Web", Wall Street Journal, Feb. 4, 1999, by Bruce Orwall (hereinafter "Orwall"). The Examiner also rejected claims 1 and 2, as originally filed, under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

As indicated above, claims 1 and 2 have been cancelled without prejudice or disclaimer to the subject matter contained therein. In view of the cancellation of claims 1 to 2, there is no longer a basis for the rejection under 35 USC 112, second paragraph. Withdrawal of the rejection is respectfully requested.

The Applicant has carefully considered the Examiner's comments with respect to the newly cited non-patent reference, Orwall, and the Official Notice taken of prior art systems that include "all the bidding/offering steps" claimed by the Applicant. It is respectfully submitted that the present invention as defined by the claims, in particular, new independent claims 16, 28 and 33 is patentably distinguishable and not obvious for the reasons as discussed in more detail below.

Orwall is directed to the reselling or "scalping" of tickets, i.e. selling tickets at above face-value. For instance, Orwall makes reference to finding the "highest bidder for coveted seats", in the first paragraph, and "reselling already purchased tickets at above face-value price", in the second paragraph. Orwall goes on to state that the Internet, and by direct reference to e-bay and Yahoo, "... is fast becoming a ticket scalper's dream".

With all due respect, it is submitted that the present invention as defined by independent claims 16, 28 and 33 is directed to a matching process or mechanism that allows a potential ticket buyer and a potential ticket sellers to conclude a ticket transaction that does not comprise

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"ticket scalping" or an "auction", and furthermore the present invention provides embodiments with additional mechanisms for safeguarding the purchaser and/or seller.

Independent claim 1, for example, includes the limitation of *charging a second transaction fee to the credit card of the purchaser associated with the accepted offer, wherein said second transaction fee is paid to the entity*. It will be appreciated that this feature comprises a form of revenue sharing, i.e. the entity shares in the revenue derived from the reselling of the ticket. This is clearly a transaction model that is not associated with "ticket scalping". Furthermore, Orwall does not disclose or suggest that the entity (e.g. arena, theater, etc.) which issued the ticket or is hosting the event receives a payment from the ticket scalper or Internet (i.e. e-bay) scalper when a ticket is sold. For instance, at paragraph 9 of the Full Text article, Orwall makes the following statements:

The reseller role is what's sparking controversy. "When you're a computerized ticketing company, and you're the original seller of tickets, there is has always been a very strong wall between that and the resellers of tickets," say former Ticketmaster president Fredric D. Rosen. Arenas, theaters and other facilities "did not want to be anywhere near the scalping side of the business."

The fact that Orwall is concerned with "ticket scalping" actually teaches away from such a limitation or feature as recited in claim 1.

Independent claim 28, for example, includes the limitations of *arranging for the delivery of the ticket(s) from the seller and validating the delivered ticket(s) and if valid contacting the purchaser and making the purchased ticket available at a location associated with the entity for pickup by the purchaser*. It will be appreciated that claim 28 provides a process for matching a ticket seller with a ticket purchaser and also addresses the problem of counterfeit or fraudulent tickets. Orwall, at paragraphs 17 and 18 of the Full Text article, recognizes this problem with existing on-line ticket resellers:

Consumer-protection specialists say that people looking to buy resale tickets online shouldn't be certain it's a legal transaction. The New York state attorney general's office, for example, has prosecuted some cases involving tickets purchased over phone lines in violation of New York, and is evaluating how to deal with the issue on the Internet.

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Shirley Sarna, who heads the consumer-fraud unit of the office, also cautions that people who purchase from Internet scalpers need to be especially wary that they aren't getting counterfeit tickets.

While Orwall clearly recognizes the problem of counterfeit tickets, fraudulent and illegal transactions, Orwall does not provide or suggest any solutions that would lead one skilled in the art to the limitations as recited in claim 28.

Independent claim 33, for example, includes limitations directed to a mechanism to ensure that the ticket selling price as set by the seller conforms with any legal requirement(s). For example, as described in paragraph [0023] of the subject application as filed, "if the venue is located in an area in which ticket "scalping" is not allowed, the offer cannot exceed the face value of the tickets". While Orwall recognizes the problems of illegal transactions, for example, as discussed at paragraph 17 of the Full Text article (noted above), Orwall does not disclose or teach the limitations of the embodiment of present invention as recited in claim 33.

As noted above, the Examiner also takes Official Notice that prior art systems includes "all the bidding/offering steps" claimed by the Applicant.

With all due respect, it is submitted that the requirements for taking Official Notice have not been satisfied. MPEP Section 2144.03 sets forth the procedures for relying on common knowledge or taking Official Notice. It finds not to be appropriate to take Official Notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. If Official Notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such Notice must be clear and unmistakable. MPEP Section 2144.03(B). In conclusion, the MPEP states:

Furthermore, ...any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in

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the record as the principal evidence upon a rejection is based.
(citations omitted) (emphasis added)

MPEP 2144.03(E).


Should it be determined that the Official Notice taken satisfies the requirements of MPEP, it is further submitted that the prior art teaching relied on by the Examiner does not remedy the deficiencies of Orwall and/or teach all of the limitations of claims 16, 28 and 33.

In view of the deficiencies associated with Orwall, it is submitted that there is no motivation for one skilled in the art to combine or modify Orwall as suggested by the Examiner. In fact, Orwall teaches away from the embodiments of the present invention as defined by independent claims 16, 28 and 33. It is therefore submitted that the present invention as defined by claims 16 to 40 is not obvious in view of Orwall, whether taken alone, or in combination with the Official Notice of prior art systems.

In view of the foregoing, it is submitted that the subject application is in condition for allowance and favorable reconsideration is respectfully requested. If it is believed that a telephone interview would advance prosecution of the present application, the Examiner is invited to telephone, collect if necessary, the Applicant's representative Bill Vass at (416) 777-7490.

Should there be any questions concerning this submission, the Examiner is invited to telephone, collect if necessary, the Applicant's representative Bill Vass at (416) 777-7490.

Respectfully submitted,
DAVIDSON, George



William B. Vass
Registration No. 36,416

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